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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MICHELLE S., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES et al., Real Parties in Interest.	B175632 (Los Angeles County Super. Ct. No. CK51545) (Jacqueline H. Lewis, Juv. Ct. Referee)

ORIGINAL PROCEEDING; application for a writ of mandate. Writ denied.

Michelle S., in pro. per., for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, Larry Cory, Assistant County Counsel, and Pamela S. Landeros, Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Law Offices of Lisa E. Mandel, David Estep and Diane Iglesias for Real Parties in Interest the Minors.

Petitioner Michelle S. is the natural mother of Daven S. and Wendi S., dependents of the juvenile court. By a petition for extraordinary writ under California Rules of Court, rule 39.1B, Michelle challenges the juvenile court's order setting a hearing under section 366.26 of the Welfare and Institutions Code[1] to consider termination of parental rights concerning the children. She contends that insufficient evidence supports the court's order setting this hearing. We deny the petition on its merits.

FACTUAL AND PROCEDURAL BACKGROUND

Daven was born to Michelle and Kirk H.[2] in 1996, and Wendi was born to Michelle and Jose T. in 2001.[3] In February 2003, real party in interest Los Angeles County Department of Children and Family Services (DCFS) learned that Michelle had been incarcerated, and that no relatives were available to care for Daven and Wendi.

On March 3, 2003, DCFS filed a petition under section 300 on the children's behalf. The petition alleged that Michelle was then incarcerated, and that she had

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1 All further statutory references are to the Welfare and Institutions Code.

2 Kirk H. is designated only as an alleged father.

3 Kirk H. and Jose T. are not parties to this petition.

failed to make a plan to provide the children with the necessities of life. The juvenile court detained the children and permitted Michelle monitored visitation.

In reports dated April 8, 2003, DCFS reported that the children had been placed in foster care. Michelle had been incarcerated for welfare fraud involving drugs: she and her brother had called in illegal medical prescriptions to pharmacies in San Diego County. She nonetheless denied any illegal use of drugs. DCFS also reported that Kirk T. lived in Texas, and the name and whereabouts of Wendi's father were then unknown.

The juvenile court sustained the petition on April 16, 2003. DCFS subsequently reported that Michelle remained incarcerated, and the children had been placed in a foster home. It also reported that Kirk H. had suffered a misdemeanor conviction in 1988 for unlawful intercourse with a minor, and that Jose T., who had been identified as Wendi's father, had been deported to Mexico.

Following a contested dispositional hearing on May 5, 2003, the juvenile court declared the children dependents of the court, and directed that they remain in foster care. Reunification services were ordered for Michelle and Kirk H., who were told that to secure reunification with the children, they had to demonstrate the ability to meet the children's needs, and to provide stable and appropriate housing. Michelle was directed to attend a parenting course and individual counseling, and to display eight clean random drug tests. In addition, she was told that if there were any missed or dirty tests, she would be required to complete a full drug rehabilitation program.

In a report dated August 12, 2003, DCFS stated that Michelle had been scheduled for release from incarceration in early July 2003. She had become hysterical and uncooperative when a social worker told her about the dispositional plan and provided her with referrals. Michelle denied that she had a drug problem

or that she had funds for transportation to drug testing centers. Although the social worker supplied her with bus tokens, she subsequently declined to participate in testing, complaining that the weather was too hot for long bus rides. After the social worker permitted Michelle to engage in drug tests through Michelle's local doctor, the social worker discovered that Michelle had not seen the doctor for over a year. Michelle began a parenting class in July 2003, but otherwise had not participated in individual counseling or drug testing.

On September 29, 2003, DCFS reported that Michelle had visited with the children on a regular basis. She remained "in denial" regarding her responsibility for completing the case plan, and that she was uncooperative and hostile toward DCSF. She had attended only three sessions of her parenting class. Although she began individual counseling in late August 2003, she had met with a counselor only two times. She tested negatively for drugs twice, but had missed nine appointments for drug tests.

At the six-month review on November 3, 2003, the juvenile court found that Michelle had maintained regular contact with the children, and that there was a substantial probability that the children would be returned to her by the next review. It directed DCFS to continue reunification services for her.

In a report dated April 5, 2004, DCFS stated although Michelle had enrolled in two different parenting programs in 2003, she had not completed either program due to poor attendance. She had also been terminated from a counseling program for noncompliance. Michelle had tested negatively for drugs eight times, the last of which occurred on December 11, 2003. However, these negative tests were not consecutive: throughout the same period, there were 21 "dirty" tests, the most recent of which was dated March 11, 2004. She had also missed meetings with DCFS to document her compliance with the case plan.

The juvenile court set a contested 12-month review for May 18, 2004. At the two-day review, the juvenile court admitted the DCFS report dated April 5, 2004, and it heard testimony from Michelle and Conley McCance, a DCFS social worker.

Michelle testified that DCFS had told her that she had been ordered to participate in group counseling, rather than individual counseling. After eight sessions of group counseling, she became employed in January 2004, and her employment prevented her from attending more sessions. She also testified that she had completed a parenting course in January 2004, and that she had provided proof of completion to DCFS. According to Michelle, she had been ordered to take eight drug tests, and she had complied with this order. She stated that, contrary to McCance's testimony, DCFS not had offered her bus passes during the previous five months.

On cross-examination, Michelle acknowledged that she had transportation to visit the children regularly and to go to work. However, when asked whether she had transportation for both purposes, she replied, "Well, sometimes yes; sometimes no." She also conceded that in March 2004, she told the DCFS social worker that she did not need a bus pass because a friend was going to give her a truck.

Following the hearing, the juvenile court found that Michelle had maintained regular visitation with the children, but nonetheless terminated reunification services for Michelle and set a hearing under section 366.26 for September 13, 2004.

DISCUSSION

The sole issue here is whether substantial evidence supports the order setting the hearing under section 366.26. When, as here, the juvenile court determines at

the 12-month review that returning children to their parent would create a substantial risk of detriment to the children, the juvenile court may terminate reunification services and order a hearing under section 366.26 if the juvenile court finds that reasonable services have been provided to the parent, and there is no substantial probability that the children will be returned to the parent within six months. (§ 366.21, subds. (f), (g)(1), (2), (h).)

Michelle, proceeding in propria persona, contends in a letter submitted to this court that the juvenile court erred in making that findings underlying the order setting the section 366.26. Her letter argues that she complied with the case plan, and that the DCFS social workers assigned to her case failed to help her, and otherwise misrepresented her activities to the juvenile court.

Michelle thus challenges the sufficiency of the evidence to support the findings that: (1) she received adequate reunification services; (2) placing the children in her custody would create a substantial risk of detriment to them; and (3) there was no substantial probability that they could be returned to her by the end of the 18-month period for reunification services, even if she continued to receive reunification services. As we explain below, she is mistaken.

The appellate standard of review applicable to these findings is not trial de novo, but review for substantial evidence. (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 168-170.) We will affirm a finding if examination of the record, reviewed as a whole and in the light most favorable to the order, discloses evidence that is "'reasonable, credible and of solid value'" which would allow a reasonable trier of fact to make the pertinent finding. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080, quoting *In re Angelia P.* (1981) 28 Cal.3d 908, 924.) Upon review for substantial evidence, we do not reweigh the evidence. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1650.)

Regarding item (1), "[t]he adequacy of reunification plans and the reasonableness of the DCFS's efforts are judged according to the circumstances of each case. [Citation.] The DCFS is required to make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult. . . .' [Citation.]" (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554.)

Regarding item (2), subdivision (f) of section 366.21 provides that in assessing the existence of a substantial risk of detriment, the juvenile court should consider the parent's participation in court-ordered treatment programs, the parent's "efforts or progress," and "the extent to which he or she availed himself or herself of services provided."

Regarding item (3), subdivision (g)(1) of section 366.21 provides that the juvenile court may find a substantial probability that the child will be returned to physical custody of her parent within the 18-month limit on reunification services only if it finds *all* of the following: "(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs."

Here, the juvenile court found that DCFS had offered Michelle adequate reunification services, including transportation funds, and that she had failed to

comply with the case plan. It stated that it did not believe that Michelle took the case plan seriously, and added: "[D]uring the months [Michelle] did have transportation, she did nothing, and she did indicate she had transportation to visit, to work, and everything else she needed to do in her life, apparently, other than the case plan."

The record supports the juvenile court's findings on these matters. Viewing the evidence in the light most favorable to the judgment, the record discloses that DCFS tried to set up a program for Michelle that addressed the problems alleged in the petition, and that it followed through with these efforts. Any lack of cooperation on Michelle's part cannot be charged to DCFS because "[r]eunification services are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]" (*In re Mario C.* (1990) 226 Cal.App.3d 599, 604.) Furthermore, there is considerable evidence that Michelle did not comply with the case plan, despite ample opportunity to do so.

We recognize that Michelle's testimony conflicts with the evidence supporting the findings. However, review for substantial evidence "*begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination [of the trier of fact], and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [trier of fact]." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, italics omitted.)

In sum, substantial evidence supports the order setting the hearing under section 366.26.

DISPOSITION

The petition for extraordinary writ is denied. This decision shall become final as to this court immediately upon its filing. (Cal. Rules of Court, rule 24(b)(3).)

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CURRY, J.

We concur:

EPSTEIN, Acting P.J.

HASTINGS, J.